

ASSEMBLY BILL

No. 576

Introduced by Assembly Member Torres

February 25, 2009

An act to amend Sections 594 and 1202.4 of the Penal Code, relating to vandalism.

LEGISLATIVE COUNSEL'S DIGEST

AB 576, as introduced, Torres. Vandalism: graffiti: recovery of costs.

Existing law, amended by Proposition 21, an initiative measure enacted by voters at the March 7, 2000, statewide primary election that requires a statute passed in each house by a $\frac{2}{3}$ vote for legislative amendment, makes a person who maliciously commits specified destructive acts with respect to another's property guilty of vandalism. Existing law establishes punishments for acts of vandalism in the form of fine or imprisonment or by both a fine and imprisonment. Existing law requires the court, when appropriate and feasible, to order a defendant who is convicted of violating this provision, or to order the offender and his or her parents, if the offender is a minor, to clean up, repair, or replace the damaged property or keep the damaged property or another specified property in the community free of graffiti for up to one year.

This bill would additionally require the court, regarding any person who is convicted of, or any person regarding whom a petition is sustained for a violation of, specified acts of vandalism, to order the defendant or juvenile offender to pay all costs incurred by any law enforcement agency in identifying and apprehending the defendant, provided that the court determines that the defendant or juvenile offender has the ability to pay.

Under existing law, in every case in which a victim, as defined, has suffered economic loss as a result of the defendant's conduct, the court is required to impose an order upon the defendant to make restitution to the victim or victims, as specified.

This bill would add to the definition of victim any governmental entity responsible for repairing, replacing, or restoring graffiti vandalized property, both publicly and privately owned, who has sustained an economic loss as the result of specified violations.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 594 of the Penal Code is amended to
2 read:

3 594. (a) Every person who maliciously commits any of the
4 following acts with respect to any real or personal property not his
5 or her own, in cases other than those specified by state law, is
6 guilty of vandalism:

- 7 (1) Defaces with graffiti or other inscribed material.
- 8 (2) Damages.
- 9 (3) Destroys.

10 Whenever a person violates this subdivision with respect to real
11 property, vehicles, signs, fixtures, furnishings, or property
12 belonging to any public entity, as defined by Section 811.2 of the
13 Government Code, or the federal government, it shall be a
14 permissive inference that the person neither owned the property
15 nor had the permission of the owner to deface, damage, or destroy
16 the property.

17 (b) (1) If the amount of defacement, damage, or destruction is
18 four hundred dollars (\$400) or more, vandalism is punishable by
19 imprisonment in the state prison or in a county jail not exceeding
20 one year, or by a fine of not more than ten thousand dollars
21 (\$10,000), or if the amount of defacement, damage, or destruction
22 is ten thousand dollars (\$10,000) or more, by a fine of not more
23 than fifty thousand dollars (\$50,000), or by both that fine and
24 imprisonment.

25 (2) (A) If the amount of defacement, damage, or destruction is
26 less than four hundred dollars (\$400), vandalism is punishable by
27 imprisonment in a county jail not exceeding one year, or by a fine

1 of not more than one thousand dollars (\$1,000), or by both that
2 fine and imprisonment.

3 (B) If the amount of defacement, damage, or destruction is less
4 than four hundred dollars (\$400), and the defendant has been
5 previously convicted of vandalism or affixing graffiti or other
6 inscribed material under Section 594, 594.3, 594.4, 640.5, 640.6,
7 or 640.7, vandalism is punishable by imprisonment in a county
8 jail for not more than one year, or by a fine of not more than five
9 thousand dollars (\$5,000), or by both that fine and imprisonment.

10 (c) ~~Upon conviction of any~~ (1) *Any person who is convicted of,*
11 *or any person regarding whom a petition is sustained for, a*
12 *violation under this section for acts of vandalism consisting of*
13 *defacing property with graffiti or other inscribed materials, the*
14 *court shall, when appropriate and feasible, in addition to any*
15 *punishment imposed under subdivision (b), order the defendant*
16 *to clean up, repair, or replace the damaged property himself or*
17 *herself, or order the defendant, and his or her parents or guardians*
18 *if the defendant is a minor, to keep the damaged property or another*
19 *specified property in the community free of graffiti for up to one*
20 *year. Participation of a parent or guardian is not required under*
21 *this subdivision if the court deems this participation to be*
22 *detrimental to the defendant, or if the parent or guardian is a single*
23 *parent who must care for young children. If the court finds that*
24 *graffiti cleanup is inappropriate, the court shall consider other*
25 *types of community service, where feasible.*

26 (2) *The court shall, in regards to any person who is convicted*
27 *of, or any person regarding whom a petition is sustained for, acts*
28 *of vandalism pursuant to Sections 594, 594.3, 594.4, 640.5, 640.6,*
29 *or 640.7 of the Penal Code, in addition to any punishment imposed*
30 *under subdivision (b), order the defendant or juvenile offender to*
31 *pay all costs incurred by any law enforcement agency in identifying*
32 *and apprehending the defendant, provided that the court*
33 *determines that the defendant or juvenile offender has the ability*
34 *to pay. The law enforcement agency shall provide evidence of, and*
35 *bear the burden of establishing, the reasonable costs that it*
36 *incurred in identifying and apprehending the defendant or juvenile*
37 *offender.*

38 (3) *The law enforcement costs authorized to be paid pursuant*
39 *to this subdivision are in addition to any other costs incurred or*
40 *recovered by the law enforcement agency and payment of these*

1 *costs does not in any way limit, preclude, or restrict any other*
2 *right, remedy, or action otherwise available to the law enforcement*
3 *agency.*

4 (d) If a minor is personally unable to pay a fine *or restitution,*
5 *including law enforcement costs, or both a fine and restitution,*
6 *including law enforcement costs,* levied for acts prohibited by this
7 section, the parent of that minor shall be liable for payment of the
8 fine *or restitution, including law enforcement costs, or both if so*
9 *levied.* A court may waive payment of the fine *or restitution,* or
10 any part thereof, by the parent upon a finding of good cause.

11 (e) As used in this section, the term “graffiti or other inscribed
12 material” includes any unauthorized inscription, word, figure,
13 mark, or design, that is written, marked, etched, scratched, drawn,
14 or painted on real or personal property.

15 (f) The court may order any person ordered to perform
16 community service or graffiti removal pursuant to paragraph (1)
17 of subdivision (c) to undergo counseling.

18 (g) This section shall become operative on January 1, 2002.

19 SEC. 2. Section 1202.4 of the Penal Code is amended to read:

20 1202.4. (a) (1) It is the intent of the Legislature that a victim
21 of crime who incurs any economic loss as a result of the
22 commission of a crime shall receive restitution directly from any
23 defendant convicted of that crime.

24 (2) Upon a person being convicted of any crime in the State of
25 California, the court shall order the defendant to pay a fine in the
26 form of a penalty assessment in accordance with Section 1464.

27 (3) The court, in addition to any other penalty provided or
28 imposed under the law, shall order the defendant to pay both of
29 the following:

30 (A) A restitution fine in accordance with subdivision (b).

31 (B) Restitution to the victim or victims, if any, in accordance
32 with subdivision (f), which shall be enforceable as if the order
33 were a civil judgment.

34 (b) In every case where a person is convicted of a crime, the
35 court shall impose a separate and additional restitution fine, unless
36 it finds compelling and extraordinary reasons for not doing so, and
37 states those reasons on the record.

38 (1) The restitution fine shall be set at the discretion of the court
39 and commensurate with the seriousness of the offense, but shall
40 not be less than two hundred dollars (\$200), and not more than ten

1 thousand dollars (\$10,000), if the person is convicted of a felony,
2 and shall not be less than one hundred dollars (\$100), and not more
3 than one thousand dollars (\$1,000), if the person is convicted of
4 a misdemeanor.

5 (2) In setting a felony restitution fine, the court may determine
6 the amount of the fine as the product of two hundred dollars (\$200)
7 multiplied by the number of years of imprisonment the defendant
8 is ordered to serve, multiplied by the number of felony counts of
9 which the defendant is convicted.

10 (c) The court shall impose the restitution fine unless it finds
11 compelling and extraordinary reasons for not doing so, and states
12 those reasons on the record. A defendant's inability to pay shall
13 not be considered a compelling and extraordinary reason not to
14 impose a restitution fine. Inability to pay may be considered only
15 in increasing the amount of the restitution fine in excess of the two
16 hundred-dollar (\$200) or one hundred-dollar (\$100) minimum.
17 The court may specify that funds confiscated at the time of the
18 defendant's arrest, except for funds confiscated pursuant to Section
19 11469 of the Health and Safety Code, be applied to the restitution
20 fine if the funds are not exempt for spousal or child support or
21 subject to any other legal exemption.

22 (d) In setting the amount of the fine pursuant to subdivision (b)
23 in excess of the two hundred-dollar (\$200) or one hundred-dollar
24 (\$100) minimum, the court shall consider any relevant factors
25 including, but not limited to, the defendant's inability to pay, the
26 seriousness and gravity of the offense and the circumstances of its
27 commission, any economic gain derived by the defendant as a
28 result of the crime, the extent to which any other person suffered
29 any losses as a result of the crime, and the number of victims
30 involved in the crime. Those losses may include pecuniary losses
31 to the victim or his or her dependents as well as intangible losses,
32 such as psychological harm caused by the crime. Consideration
33 of a defendant's inability to pay may include his or her future
34 earning capacity. A defendant shall bear the burden of
35 demonstrating his or her inability to pay. Express findings by the
36 court as to the factors bearing on the amount of the fine shall not
37 be required. A separate hearing for the fine shall not be required.

38 (e) The restitution fine shall not be subject to penalty
39 assessments authorized in Section 1464 or Chapter 12
40 (commencing with Section 76000) of Title 8 of the Government

1 Code, or the state surcharge authorized in Section 1465.7, and
2 shall be deposited in the Restitution Fund in the State Treasury.

3 (f) Except as provided in subdivisions (q) and (r), in every case
4 in which a victim has suffered economic loss as a result of the
5 defendant's conduct, the court shall require that the defendant
6 make restitution to the victim or victims in an amount established
7 by court order, based on the amount of loss claimed by the victim
8 or victims or any other showing to the court. If the amount of loss
9 cannot be ascertained at the time of sentencing, the restitution
10 order shall include a provision that the amount shall be determined
11 at the direction of the court. The court shall order full restitution
12 unless it finds compelling and extraordinary reasons for not doing
13 so, and states them on the record. The court may specify that funds
14 confiscated at the time of the defendant's arrest, except for funds
15 confiscated pursuant to Section 11469 of the Health and Safety
16 Code, be applied to the restitution order if the funds are not exempt
17 for spousal or child support or subject to any other legal exemption.

18 (1) The defendant has the right to a hearing before a judge to
19 dispute the determination of the amount of restitution. The court
20 may modify the amount, on its own motion or on the motion of
21 the district attorney, the victim or victims, or the defendant. If a
22 motion is made for modification of a restitution order, the victim
23 shall be notified of that motion at least 10 days prior to the
24 proceeding held to decide the motion.

25 (2) Determination of the amount of restitution ordered pursuant
26 to this subdivision shall not be affected by the indemnification or
27 subrogation rights of any third party. Restitution ordered pursuant
28 to this subdivision shall be ordered to be deposited to the
29 Restitution Fund to the extent that the victim, as defined in
30 subdivision (k), has received assistance from the Victim
31 Compensation Program pursuant to Chapter 5 (commencing with
32 Section 13950) of Part 4 of Division 3 of Title 2 of the Government
33 Code.

34 (3) To the extent possible, the restitution order shall be prepared
35 by the sentencing court, shall identify each victim and each loss
36 to which it pertains, and shall be of a dollar amount that is sufficient
37 to fully reimburse the victim or victims for every determined
38 economic loss incurred as the result of the defendant's criminal
39 conduct, including, but not limited to, all of the following:

1 (A) Full or partial payment for the value of stolen or damaged
2 property. The value of stolen or damaged property shall be the
3 replacement cost of like property, or the actual cost of repairing
4 the property when repair is possible.

5 (B) Medical expenses.

6 (C) Mental health counseling expenses.

7 (D) Wages or profits lost due to injury incurred by the victim,
8 and if the victim is a minor, wages or profits lost by the minor's
9 parent, parents, guardian, or guardians, while caring for the injured
10 minor. Lost wages shall include any commission income as well
11 as any base wages. Commission income shall be established by
12 evidence of commission income during the 12-month period prior
13 to the date of the crime for which restitution is being ordered,
14 unless good cause for a shorter time period is shown.

15 (E) Wages or profits lost by the victim, and if the victim is a
16 minor, wages or profits lost by the minor's parent, parents,
17 guardian, or guardians, due to time spent as a witness or in assisting
18 the police or prosecution. Lost wages shall include any commission
19 income as well as any base wages. Commission income shall be
20 established by evidence of commission income during the
21 12-month period prior to the date of the crime for which restitution
22 is being ordered, unless good cause for a shorter time period is
23 shown.

24 (F) Noneconomic losses, including, but not limited to,
25 psychological harm, for felony violations of Section 288.

26 (G) Interest, at the rate of 10 percent per annum, that accrues
27 as of the date of sentencing or loss, as determined by the court.

28 (H) Actual and reasonable attorney's fees and other costs of
29 collection accrued by a private entity on behalf of the victim.

30 (I) Expenses incurred by an adult victim in relocating away
31 from the defendant, including, but not limited to, deposits for
32 utilities and telephone service, deposits for rental housing,
33 temporary lodging and food expenses, clothing, and personal items.
34 Expenses incurred pursuant to this section shall be verified by law
35 enforcement to be necessary for the personal safety of the victim
36 or by a mental health treatment provider to be necessary for the
37 emotional well-being of the victim.

38 (J) Expenses to install or increase residential security incurred
39 related to a crime, as defined in subdivision (c) of Section 667.5,

1 including, but not limited to, a home security device or system, or
2 replacing or increasing the number of locks.

3 (K) Expenses to retrofit a residence or vehicle, or both, to make
4 the residence accessible to or the vehicle operational by the victim,
5 if the victim is permanently disabled, whether the disability is
6 partial or total, as a direct result of the crime.

7 (4) (A) If, as a result of the defendant's conduct, the Restitution
8 Fund has provided assistance to or on behalf of a victim or
9 derivative victim pursuant to Chapter 5 (commencing with Section
10 13950) of Part 4 of Division 3 of Title 2 of the Government Code,
11 the amount of assistance provided shall be presumed to be a direct
12 result of the defendant's criminal conduct and shall be included
13 in the amount of the restitution ordered.

14 (B) The amount of assistance provided by the Restitution Fund
15 shall be established by copies of bills submitted to the California
16 Victim Compensation and Government Claims Board reflecting
17 the amount paid by the board and whether the services for which
18 payment was made were for medical or dental expenses, funeral
19 or burial expenses, mental health counseling, wage or support
20 losses, or rehabilitation. Certified copies of these bills provided
21 by the board and redacted to protect the privacy and safety of the
22 victim or any legal privilege, together with a statement made under
23 penalty of perjury by the custodian of records that those bills were
24 submitted to and were paid by the board, shall be sufficient to meet
25 this requirement.

26 (C) If the defendant offers evidence to rebut the presumption
27 established by this paragraph, the court may release additional
28 information contained in the records of the board to the defendant
29 only after reviewing that information in camera and finding that
30 the information is necessary for the defendant to dispute the amount
31 of the restitution order.

32 (5) Except as provided in paragraph (6), in any case in which
33 an order may be entered pursuant to this subdivision, the defendant
34 shall prepare and file a disclosure identifying all assets, income,
35 and liabilities in which the defendant held or controlled a present
36 or future interest as of the date of the defendant's arrest for the
37 crime for which restitution may be ordered. The financial disclosure
38 statements shall be made available to the victim and the board
39 pursuant to Section 1214. The disclosure shall be signed by the
40 defendant upon a form approved or adopted by the Judicial Council

1 for the purpose of facilitating the disclosure. Any defendant who
2 willfully states as true any material matter that he or she knows to
3 be false on the disclosure required by this subdivision is guilty of
4 a misdemeanor, unless this conduct is punishable as perjury or
5 another provision of law provides for a greater penalty.

6 (6) A defendant who fails to file the financial disclosure required
7 in paragraph (5), but who has filed a financial affidavit or financial
8 information pursuant to subdivision (c) of Section 987, shall be
9 deemed to have waived the confidentiality of that affidavit or
10 financial information as to a victim in whose favor the order of
11 restitution is entered pursuant to subdivision (f). The affidavit or
12 information shall serve in lieu of the financial disclosure required
13 in paragraph (5), and paragraphs (7) to (10), inclusive, shall not
14 apply.

15 (7) Except as provided in paragraph (6), the defendant shall file
16 the disclosure with the clerk of the court no later than the date set
17 for the defendant's sentencing, unless otherwise directed by the
18 court. The disclosure may be inspected or copied as provided by
19 subdivision (b), (c), or (d) of Section 1203.05.

20 (8) In its discretion, the court may relieve the defendant of the
21 duty under paragraph (7) of filing with the clerk by requiring that
22 the defendant's disclosure be submitted as an attachment to, and
23 be available to, those authorized to receive the following:

24 (A) Any report submitted pursuant to subparagraph (C) of
25 paragraph (2) of subdivision (b) of Section 1203 or subdivision
26 (g) of Section 1203.

27 (B) Any stipulation submitted pursuant to paragraph (4) of
28 subdivision (b) of Section 1203.

29 (C) Any report by the probation officer, or any information
30 submitted by the defendant applying for a conditional sentence
31 pursuant to subdivision (d) of Section 1203.

32 (9) The court may consider a defendant's unreasonable failure
33 to make a complete disclosure pursuant to paragraph (5) as any of
34 the following:

35 (A) A circumstance in aggravation of the crime in imposing a
36 term under subdivision (b) of Section 1170.

37 (B) A factor indicating that the interests of justice would not be
38 served by admitting the defendant to probation under Section 1203.

1 (C) A factor indicating that the interests of justice would not be
2 served by conditionally sentencing the defendant under Section
3 1203.

4 (D) A factor indicating that the interests of justice would not
5 be served by imposing less than the maximum fine and sentence
6 fixed by law for the case.

7 (10) A defendant's failure or refusal to make the required
8 disclosure pursuant to paragraph (5) shall not delay entry of an
9 order of restitution or pronouncement of sentence. In appropriate
10 cases, the court may do any of the following:

11 (A) Require the defendant to be examined by the district attorney
12 pursuant to subdivision (h).

13 (B) If sentencing the defendant under Section 1170, provide
14 that the victim shall receive a copy of the portion of the probation
15 report filed pursuant to Section 1203.10 concerning the defendant's
16 employment, occupation, finances, and liabilities.

17 (C) If sentencing the defendant under Section 1203, set a date
18 and place for submission of the disclosure required by paragraph
19 (5) as a condition of probation or suspended sentence.

20 (11) If a defendant has any remaining unpaid balance on a
21 restitution order or fine 120 days prior to his or her scheduled
22 release from probation or 120 days prior to his or her completion
23 of a conditional sentence, the defendant shall prepare and file a
24 new and updated financial disclosure identifying all assets, income,
25 and liabilities in which the defendant holds or controls or has held
26 or controlled a present or future interest during the defendant's
27 period of probation or conditional sentence. The financial
28 disclosure shall be made available to the victim and the board
29 pursuant to Section 1214. The disclosure shall be signed and
30 prepared by the defendant on the same form as described in
31 paragraph (5). Any defendant who willfully states as true any
32 material matter that he or she knows to be false on the disclosure
33 required by this subdivision is guilty of a misdemeanor, unless
34 this conduct is punishable as perjury or another provision of law
35 provides for a greater penalty. The financial disclosure required
36 by this paragraph shall be filed with the clerk of the court no later
37 than 90 days prior to the defendant's scheduled release from
38 probation or completion of the defendant's conditional sentence.

39 (g) The court shall order full restitution unless it finds
40 compelling and extraordinary reasons for not doing so, and states

1 those reasons on the record. A defendant's inability to pay shall
2 not be considered a compelling and extraordinary reason not to
3 impose a restitution order, nor shall inability to pay be a
4 consideration in determining the amount of a restitution order.

5 (h) The district attorney may request an order of examination
6 pursuant to the procedures specified in Article 2 (commencing
7 with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part
8 2 of the Code of Civil Procedure, in order to determine the
9 defendant's financial assets for purposes of collecting on the
10 restitution order.

11 (i) A restitution order imposed pursuant to subdivision (f) shall
12 be enforceable as if the order were a civil judgment.

13 (j) The making of a restitution order pursuant to subdivision (f)
14 shall not affect the right of a victim to recovery from the Restitution
15 Fund as otherwise provided by law, except to the extent that
16 restitution is actually collected pursuant to the order. Restitution
17 collected pursuant to this subdivision shall be credited to any other
18 judgments for the same losses obtained against the defendant
19 arising out of the crime for which the defendant was convicted.

20 (k) For purposes of this section, "victim" shall include all of
21 the following:

22 (1) The immediate surviving family of the actual victim.

23 (2) Any corporation, business trust, estate, trust, partnership,
24 association, joint venture, government, governmental subdivision,
25 agency, or instrumentality, or any other legal or commercial entity
26 when that entity is a direct victim of a crime.

27 (3) Any person who has sustained economic loss as the result
28 of a crime and who satisfies any of the following conditions:

29 (A) At the time of the crime was the parent, grandparent, sibling,
30 spouse, child, or grandchild of the victim.

31 (B) At the time of the crime was living in the household of the
32 victim.

33 (C) At the time of the crime was a person who had previously
34 lived in the household of the victim for a period of not less than
35 two years in a relationship substantially similar to a relationship
36 listed in subparagraph (A).

37 (D) Is another family member of the victim, including, but not
38 limited to, the victim's fiancé or fiancée, and who witnessed the
39 crime.

40 (E) Is the primary caretaker of a minor victim.

1 (4) Any person who is eligible to receive assistance from the
2 Restitution Fund pursuant to Chapter 5 (commencing with Section
3 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

4 (5) *Any governmental entity responsible for repairing, replacing,*
5 *or restoring graffiti vandalized property, both publicly and*
6 *privately owned, which has sustained an economic loss as the*
7 *result of a violation of Sections 594, 594.3, 594.4, 640.5, 640.6,*
8 *or 640.7 of the Penal Code.*

9 (l) At its discretion, the board of supervisors of any county may
10 impose a fee to cover the actual administrative cost of collecting
11 the restitution fine, not to exceed 10 percent of the amount ordered
12 to be paid, to be added to the restitution fine and included in the
13 order of the court, the proceeds of which shall be deposited in the
14 general fund of the county.

15 (m) In every case in which the defendant is granted probation,
16 the court shall make the payment of restitution fines and orders
17 imposed pursuant to this section a condition of probation. Any
18 portion of a restitution order that remains unsatisfied after a
19 defendant is no longer on probation shall continue to be enforceable
20 by a victim pursuant to Section 1214 until the obligation is
21 satisfied.

22 (n) If the court finds and states on the record compelling and
23 extraordinary reasons why a restitution fine or full restitution order
24 should not be required, the court shall order, as a condition of
25 probation, that the defendant perform specified community service,
26 unless it finds and states on the record compelling and
27 extraordinary reasons not to require community service in addition
28 to the finding that restitution should not be required. Upon
29 revocation of probation, the court shall impose restitution pursuant
30 to this section.

31 (o) The provisions of Section 13963 of the Government Code
32 shall apply to restitution imposed pursuant to this section.

33 (p) The court clerk shall notify the California Victim
34 Compensation and Government Claims Board within 90 days of
35 an order of restitution being imposed if the defendant is ordered
36 to pay restitution to the board due to the victim receiving
37 compensation from the Restitution Fund. Notification shall be
38 accomplished by mailing a copy of the court order to the board,
39 which may be done periodically by bulk mail or electronic mail.

1 (q) Upon conviction for a violation of Section 236.1, the court
2 shall, in addition to any other penalty or restitution, order the
3 defendant to pay restitution to the victim in any case in which a
4 victim has suffered economic loss as a result of the defendant's
5 conduct. The court shall require that the defendant make restitution
6 to the victim or victims in an amount established by court order,
7 based on the amount of loss claimed by the victim or victims or
8 any other showing to the court. In determining restitution pursuant
9 to this section, the court shall base its order upon the greater of the
10 following: the gross value of the victim's labor or services based
11 upon the comparable value of similar services in the labor market
12 in which the offense occurred, or the value of the victim's labor
13 as guaranteed under California law, or the actual income derived
14 by the defendant from the victim's labor or services or any other
15 appropriate means to provide reparations to the victim.

16 (r) In addition to any other penalty or fine, the court shall order
17 any person who has been convicted of any violation of Section
18 653h, 653s, 653u, or 653w to make restitution to any owner or
19 lawful producer, or trade association acting on behalf of the owner
20 or lawful producer, of a phonograph record, disc, wire, tape, film,
21 or other device or article from which sounds or visual images are
22 derived that suffered economic loss resulting from the violation.
23 For the purpose of calculating restitution, the value of each
24 nonconforming article or device shall be based on the aggregate
25 wholesale value of lawfully manufactured and authorized devices
26 or articles from which sounds or visual images are devised, unless
27 a higher value can be proved in the case of (1) an unreleased audio
28 work, or (2) an audiovisual work that, at the time of unauthorized
29 distribution, has not been made available in copies for sale to the
30 general public in the United States on a digital versatile disc. The
31 order of restitution shall also include reasonable costs incurred as
32 a result of any investigation of the violation undertaken by the
33 owner, lawful producer, or trade association acting on behalf of
34 the owner or lawful producer. "Aggregate wholesale value" means
35 the average wholesale value of lawfully manufactured and
36 authorized sound or audiovisual recordings. Proof of the specific
37 wholesale value of each nonconforming device or article is not
38 required.

O